

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

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In re: : Sub-Chapter V Chapter 11
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ZHANG MEDICAL P.C., d/b/a NEW HOPE : Case No.: 23-10678-pb
FERTILITY CENTER, :
:
Debtor. :
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**STIPULATION AND AGREED ORDER
REGARDING USE & OCCUPANCY PAYMENTS**

This Stipulation and Agreed Order (the “Stipulation”) is made as of August 17, 2023 by and between Zhang Medical P.C., d/b/a New Hope Fertility Center (the “Debtor”) and GLL BVK Columbus Circle LLC (the “Landlord,” and together with the Debtor, the “Parties”).

RECITALS

WHEREAS, the Landlord is the owner of real property located at 4 Columbus Circle, New York, New York (the “Building”); and

WHEREAS, the Landlord leased to the Debtor the entire second, third, fourth and fifth floors (the “Leased Premises”) in the Building pursuant to that certain Agreement of Lease dated December 31, 2018 (together with all amendments, the “Lease”); and

WHEREAS, the Lease required the Debtor to pay fixed monthly rent (“Base Rent”), and additional rent charges, including but not limited to, charges for electricity, HVAC, condenser water, water, real estate taxes and miscellaneous maintenance costs (“Additional Rent”); and

WHEREAS, on April 30, 2023 (the “Petition Date”), the Debtor filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code; and

WHEREAS, on June 30, 2023, the Debtor filed a motion [ECF No. 74] to reject the Lease *nunc pro tunc* to June 30, 2023, and on July 27, 2023, the Court entered an order [ECF No. 96] authorizing the rejection of the Lease effective as of July 20, 2023; and

WHEREAS, notwithstanding the rejection of the Lease, the Debtor continues to use and occupy the third and fourth floor, and a portion of the second floor, of the Leased Premises; and

WHEREAS, the Landlord issued to the Debtor invoices (together with back-up documentation) for charges related to the Debtor's use and occupancy of the Leased Premises (the "Use & Occupancy Charges") for the month of August 2023 as follows: (i) second floor – Base Rent of \$74,250.00 (representing 75% of the Base Rent due for the second floor under the terms of the Lease), and Additional Rent of \$2,541.02 (for charges accruing prior to August 2023); (ii) third floor – Base Rent of \$103,592.50, and Additional Rent of \$5,034.62 (for charges accruing prior to August 2023); (iii) fourth floor – Base Rent of \$103,592.50, and Additional Rent of \$16,604.67 (for charges accruing prior to August 2023); and (iv) fifth floor – Base Rent of \$0, and Additional Rent of \$942.27 (for charges accruing prior to August 2023) (the foregoing charges in the aggregate sum of \$306,557.58, the "August 2023 Use & Occupancy Charges"); and

WHEREAS, the Debtor acknowledges that it is obligated to pay Use & Occupancy Charges to the Landlord; the Debtor has not paid the August 2023 Use & Occupancy Charges; and the Debtor disputes the amount that should be charged for Use & Occupancy Charges; and

WHEREAS, the Parties have agreed, without prejudice, to the Debtor's payment of the August 2023 Use & Occupancy Charges and monthly Use & Occupancy Charges going forward on the terms set forth in this Stipulation.

NOW THEREFORE, IT IS STIPULATED, CONSENTED TO AND AGREED BY THE UNDERSIGNED PARTIES THAT:

1. The foregoing Recitals are incorporated herein by this reference.
2. This Stipulation shall be effective only when executed by the Parties hereto and approved by the Court.
3. If the Debtor has not done so already, by no later than two (2) business days after entry of this Stipulation by the Court, the Debtor must pay to the Landlord the sum of \$247,157.58 on account of the August 2023 Use & Occupancy Charges (such sum representing all of the Base Rent and Additional Rent for the third, fourth and fifth floors as set forth in the August 2023 invoices, and 15% of the Base Rent plus Additional Rent for the second floor).
4. On or before September 1, 2023, the Debtor shall pay Use & Occupancy Charges for the month of September 2023 in the sum of \$103,592.50 (Base Rent for the third floor) plus Additional Rent charges as will be invoiced for the third floor; plus \$103,592.50 (Base Rent for the fourth floor) plus Additional Rent charges as will be invoiced for the fourth floor; plus \$14,850.00 (representing 15% of the Base Rent for the second floor) plus Additional Rent charges as will be invoiced for the second floor (collectively, the "Continuing Use & Occupancy Charges").
5. Until such time as the Debtor has vacated the Leased Premises, the Debtor shall pay to the Landlord on the first business day of each month beginning on October 1, 2023, all of the Continuing Use & Occupancy Charges.
6. Notwithstanding anything to the contrary contained in this Stipulation, the Debtor reserves all its rights to assert that the Use & Occupancy Charges should be less than the amounts agreed to in this Stipulation, and the Debtor shall be entitled to a credit if the Court determines, or the Parties agree, that the Debtor overpaid Use & Occupancy Charges.

7. Notwithstanding anything to the contrary contained in this Stipulation, the Landlord reserves all its rights to assert that the Use & Occupancy Charges should be more than the amounts agreed to in this Stipulation, and the Landlord shall be entitled to recover from the Debtor any shortfall of Use & Occupancy Charges if the Court determines, or the Parties agree, that Use & Occupancy Charges should be more than the amounts paid by the Debtor pursuant to this Stipulation.

8. The Landlord expressly reserves, and does not waive, its right to seek Court authorization to compel the Debtor to vacate the Leased Premises, and the Debtor expressly reserves, and does not waive, its right to object to any such request.

9. Except as expressly set forth herein, this Stipulation does not and shall not be deemed to constitute a waiver by the Landlord or the Debtor of any rights or remedies that it may have or to which it may be entitled. Neither this Stipulation nor the acceptance by the Landlord of any Use & Occupancy Charges from the Debtor shall create any leasehold tenancy interest in the Debtor or any other person or entity, or any right to occupy, possess or use the Leased Premises.

10. Subject to the terms hereof, this Stipulation shall be immediately effective and enforceable upon the date this Stipulation is entered by the Court on the docket in the above-captioned case.

11. This Stipulation shall be binding on and inure to the benefit of the successors and assigns of each of the Parties hereto.

12. This Stipulation may be executed in any number of counterparts and by different Parties hereto in separate counterparts, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute one and the same agreement. This

Stipulation may be executed by electronic signatures, including without limitation, by PDF, and all electronic signatures shall have the same force and effect as an original signature.

13. This Court shall retain jurisdiction over any and all matters arising from or related to this Stipulation.

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Counsel to GLL BVK Columbus Circle LLC

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By: /s/ Norma E. Ortiz
Norma E. Ortiz

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IT IS SO ORDERED:

Dated: New York, New York
August 22, 2023

/s/ Philip Bentley
Hon. Philip Bentley
United States Bankruptcy Judge